UNITED NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 817

Case No. 902: BAKIR

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen; Ms. Deborah Taylor Ashford;

Whereas, on 3 December 1995, Abdullah Mohd Bakir, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application containing pleas which read, in part, as follows:

"...

1. [To order] reappointment in an equivalent post of ARDO [Area Registration and Distribution Officer], ..., or terminati[on of] my services with full compensation;

2. [To order] compensation for the moral and psychological harm [incurred by the Applicant] as a result of [his] working as a Clerk (... [and] being supervised by my very counterpart, ARSSO [Area Relief and Social Services Officer], and/or reappoint[ment] in an equivalent post of a supervisory nature;

3. [To order] compensation for the partial disability [incurred by the Applicant] as a result of undergoing a surgery during duty hours. ..."

Whereas the Respondent filed his answer on 28 May 1996;

Whereas, on 23 July 1996, the Applicant requested the production of certain documents by the Respondent;

Whereas, on 5 August 1996, the Tribunal requested the Respondent's views on the Applicant's request for production of documents, which the Respondent provided on 8 September 1996;

Whereas the Applicant filed written observations on 8 October 1996;

Whereas the Applicant filed additional written observations on 16 April 1997;

Whereas the facts in the case are as follows:

The Applicant joined the Agency as a Clerk "C" in the Latakia Office, North Area, Syrian Arab Republic (SAR), on 18 April 1973. With effect from 1 August 1973, he served on a temporary indefinite appointment as an area staff member in the capacity of Food Centre Manager "C", at the grade 2, step I level, at Latakia Milk and Feeding Centre, Aleppo. With effect from 1 March 1979, the Applicant was transferred to the post of Area Registration and Distribution Officer (ARDO) at Homs Area Office.

On 8 November 1993, the Applicant wrote to the Director of UNRWA Affairs, SAR, notifying the latter that he had undergone a surgical operation, of which the "direct cause" was his work with the Agency; he requested compensation for his injury. On 21 November 1993, the Director of UNRWA Affairs, SAR, wrote to the Chief, Field Health Programme, attaching the Applicant's letter of 8 November and the medical certificate. The Director of UNRWA Affairs, SAR, requested that the Applicant be examined by a panel of UNRWA doctors, who could determine to what extent the Applicant's injury was attributable to his duties with the Agency. The medical report was adopted on 24 November 1993. It concluded that "[t]he accident occurred during work time" and that the Applicant had undergone surgery immediately after the onset of symptoms on

3 October 1993, as it was a "life threatening case". On 14 December 1993, the Chief, Medical Care Services, gave the following response to the Personnel Officer's request for a final determination of whether the Applicant's medical condition was attributable to service:

> "I concur with the Panel of UNRWA doctors who examined [the Applicant] on 24 November 1993, that the strangulation of the hernias is higher in persons who perform physical hard work, which is not the case with [the Applicant]."

On 5 January 1994, the Personnel Officer (Area), UNRWA Headquarters, Vienna, wrote to the Field Personnel Officer, SAR, stating that, based on the provisions of paragraph 6 of area staff rule 106.4, the Applicant would not be entitled to have his claim considered because he had failed to submit his claim within two months following the onset of his illness, "i.e. March 1993". The Personnel Officer further noted that the panel of UNRWA doctors had stated that the likelihood of incurring a strangulation of the hernia, from which the Applicant had suffered, was higher in those performing physical hard work, such as labourers, than in those performing administrative tasks.

On 27 January 1994, the Applicant wrote to the Field Administration Officer, SAR, requesting that his tasks be limited to "light administrative" work, that he be transferred to another post within Central Area or Latakia, and that he be exempted from distribution duties.

On 16 May 1994, the Applicant wrote to the Director of UNRWA Affairs, SAR, objecting to his post of ARDO, grade 08, having been reclassified and downgraded to that of Clerk, grade 07, and to the order that he should relinquish his office to the Area Relief and Social Services Officer.

In a reply dated 17 May 1994, the Director of UNRWA Affairs, SAR, stated that as a result of an Agency-wide study on the

organization and staffing of the Relief and Social Services Department at the Field Office and in the Areas, the post of ARDO in all areas except Damascus had been reclassified to Registration Clerk, grade 07. The Director stated that the Applicant's grade would be protected at its existing level, i.e., that he would be retained at grade 08, and that he would no longer be responsible for distribution as he had requested. The Director emphasized that neither the Applicant nor other Registration Clerks were being forced to resign and that the re-classification of posts had been effected "Agency-wide, in the interest of the Agency."

On 20 July 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 14 July 1995. Its findings, evaluations and recommendation read, in part, as follows:

"III. BOARD FINDINGS, EVALUATION AND JUDGEMENT

16. ...

A. The Appellant's appeal against the aboli[tion] and reclassification of his post of Area Registration and Distribution Officer, Grade 08, to Registration Clerk, Grade 07, with grade and salary protection:

...

..., the Board is of the opinion that it is the prerogative of the Administration to reorganize the structure of any division in the interest of the Agency provided that affected staff members are dealt with within the framework of the standing rules, and as long as the Administration's decision is not vitiated by any prejudice or bias against these staff members.

In this case, the Appellant was appointed to the post of Registration Clerk with grade and salary protection. The Board also could not establish that the Administration's decision to reclassify the Appellant's original post has been motivated by any extraneous factors.

As for the Appellant's objection to the Administration's decision to cancel the post of Camp Services Officer, the Board is of the opinion that it is within the managerial discretion of the Administration to organize and reorganize posts, as long as the relevant rules have been complied with and no evidence has been adduced to prove that the Administration's decision has been motivated by prejudice against the Appellant.

B. <u>The Appellant's appeal against the Administration's decision not to consider his illness attributable to his service with the Agency</u>:

...

By reference to the ... report [dated 24 November 1993] the [Medical] Board noted the following:

(a) The report states that the Appellant 'suffered from left inguinal hernia since March 1993 ... on October 1993 he felt pain in the left inguinal region and abdomen with vomiting; he was referred to hospital, where he was diagnosed as [having a] left strangulated inguinal hernia and an immediate operation was performed (life threatening case)'.

(b) The report also states that 'the accident occurred during the work time. However, the possibilities of strangulation of the hernia are higher in performing physical hard works where the case is usually found among labourers rather than administration workers', and that the Appellant 'should be excused from hard physical work due to the possibility of recurrence of hernia'.

(c) The medical doctors who submitted the report based their opinion on the medical report of the Medical care Hospital which states that the Appellant was admitted to the hospital on Sunday, 3 October 1993 at 8:30 a.m. for suffering of left strangulated inguinal hernia and underwent an operation.

The report of the Medical Care Hospital also states that the Appellant's injury is due to his strenuous work.

This report is obviously the only evidence which the Agency doctors had before them.

As for the date of the Appellant's illness, the Board could not find any evidence to support the conclusion of the three Agency doctors that the Appellant suffered from left inguinal hernia 'since March 1993', and, therefore, finds this part of their conclusions not acceptable.

IV. RECOMMENDATION

17. ..., the Board unanimously makes its recommendation

A. to uphold the Administration's decision to reclassify the Appellant's original post of Area Registration and Distribution Officer, Grade 08, to Registration Clark, Grade 07, with grade and salary protection; and, that this part of the Appellant's appeal be rejected, and

B. to review the Administration's decision not to consider the Appellant's illness attributable to his service with the Agency with a view to giving the Appellant compensation for his injury under the standing provisions of area staff rule 106.4."

On 31 August 1995, the Commissioner General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"You will note that the Joint Appeals Board concluded that the decision to reclassify your post was within the discretion of the Administration and that the decision was properly implemented; the Board recommended that this aspect of your appeal be dismissed. Regarding your service-incurred illness claim, the Board found that the medical evidence supported your claim and recommended that your illness be treated as attributable to service.

I have carefully reviewed the Board's report. I accept the recommendation to uphold the Administration's decision to reclassify your post and, therefore, this part of your appeal is dismissed. As to the Board's second recommendation, that your illness be treated as service-connected, the medical evidence does not support your contention that your illness arose out of service. Moreover, the medical opinions of record support the conclusion that the illness did not arise out of service. Therefore, I have decided not to accept the conclusions and recommendations of the Board, and your appeal is dismissed."

On 3 December 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's post of ARDO was actually abolished and, pursuant to the Staff Rules, the Agency should have offered him an equivalent post or terminated his services with full compensation, instead of downgrading his position.

2. The Applicant properly reported his illness within two months after his first attack on 3 October 1993. Since his illness was attributable to service with the Agency, the Applicant has a right to partial disability benefits.

Whereas the Respondent's principal contentions are:

1. The reclassification of the Applicant's post was a matter within the managerial discretion of the Agency, which discretion was properly exercised.

2. The Applicant's claim for compensation was not submitted within the requisite time-limit and his illness was not attributable to the performance of official duties on behalf of the Agency.

The Tribunal, having deliberated from 14 to 25 July 1997, now pronounces the following judgement:

I. The Applicant's case consists of two parts: first, he objects to the abolition by reclassification of his post of Area Registration and Distribution Officer, grade 8, to Registration Clerk, grade 7, with protected grade and salary. Second, he objects to the decision that his injury was not attributable to service. The Applicant's work consisted of checking registration documents and supervising the distribution of rations to refugees.

II. The Tribunal agrees with the finding of the Joint Appeals Board (JAB) relating to the decision to abolish and reclassify the Applicant's post. This decision was taken in the context of a structural reorganization by the Administration in the interest of the Agency. The Tribunal agrees with the JAB that there is no evidence of prejudice or bias against the Applicant, nor is there evidence of extraneous factors influencing the decision.

Indeed, the Applicant was subsequently appointed to the newly reclassified post of Registration Clerk, grade 7, and he received grade and salary protection.

III. On 8 November 1993, the Applicant wrote to the Director, UNRWA Affairs, Syrian Arab Republic, stating that he had undergone an emergency operation for an injury attributable to service. At this time also, he sought the appointment of assistants or, alternatively, transfer to an administrative post.

On 24 November 1993, the Applicant was examined by a panel of three physicians (the medical panel) on behalf of UNRWA. They reported that the Applicant had suffered from a left inguinal hernia since March 1993. On 3 October 1993, while performing the duties of his post, the Applicant felt severe pain in the left inguinal region and abdomen, with vomiting. He was taken to the hospital where a left strangulated inguinal hernia was diagnosed. An immediate operation was performed, since this condition was determined to be life-threatening.

The medical panel's report stated that the Applicant's "accident occurred during the work time. However, the possibilities of strangulation of the hernia [are] higher in performing physical hard work where the case is usually found among labourers rather than administration workers."

The Chief of Medical Care Services, on reading the medical panel's report, concurred with the finding that "strangulation of

hernias is higher in persons who perform hard physical work, which is not the case with [the Applicant]."

The medical report does not address the Applicant's work condition in relation to either the Applicant's strangulation of the hernia or to the performance of hard physical labour by the Applicant.

IV. Staff rule 106.4 provides, inter alia, that "compensation shall be awarded, in the event of death, injury or illness of a staff member, which the Agency determines to be attributable to the performance of official duties on behalf of the Agency."

The Respondent contends that the Applicant's claim should not be considered because the claim was not submitted within two months of the onset of the illness, which, according to the Respondent, occurred in March 1993.

V. The medical panel's conclusion on 24 November 1993, in this regard, is based on the medical history given by the Applicant. However, even though the Applicant had been experiencing symptoms from March 1993, the situation only became critical in October, when the Applicant had emergency surgery. It would be unfair, in the Tribunal's view, to penalize the Applicant for having endured whatever symptoms he had, and for having continued to work despite the symptoms, until the emergency arose. It is understandable that the Applicant did not realize that he might have been developing a serious condition. The existence of a serious condition only emerged in October. Therefore, the Applicant's notification of his illness was made within the required time period.

V. While there is no direct evidence of what precisely caused the strangulation, in the absence of a conclusive medical report, neither the Respondent nor the Tribunal can determine the cause of the strangulation. The Applicant states that he was performing the

functions of two staff members, as he was both foreman and distribution labourer, which require hard physical labour. Therefore, the Tribunal agrees with the JAB that a reasonable conclusion is that the illness or injury could be attributable to service.

VI. For the foregoing reasons, the Tribunal finds that the Commissioner-General erred in finding that the Applicant's illness was not attributable to service. The Tribunal therefore orders that the decision not to compensate the Applicant be re-considered under the provisions of area staff rule 106.4.

VII. Accordingly, the Tribunal orders the case to be remanded to the Agency to be dealt with in accordance with the provisions of the Staff Rules relating to injury or illness attributable to the performance of official duties on behalf of the Agency, and that the Applicant be awarded the appropriate compensation which may arise therefrom.

VIII. The Tribunal rejects all other claims made by the Applicant.

(Signatures)

Hubert THIERRY
President

Samar SEN
Vice-President

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary